



# Income Tax and Withholding DOR Directive 94-1

Massachusetts  
Department of  
Revenue

## Reporting of Massachusetts Branch Bank Income for Purposes of the Bank Excise

### Issue:

What income reporting method is permissible when a bank operates one or more branches directly, and not through a subsidiary, both in Massachusetts and elsewhere, not including a branch or branches operated in a foreign country?

### Directive:

When a bank operates one or more branches directly, not through a subsidiary, both in Massachusetts and in any one or more of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico, the territories or possessions of the United States, or a political subdivision of any of the foregoing, the Commissioner will allow the bank to file returns pursuant to G.L. c. 63, § 2 using any income reporting method that is reasonably adapted to approximate its net income derived from business carried on within Massachusetts. Any bank which reports its income pursuant to this directive must clearly describe its reporting method in a statement attached to its duly-filed return and consent to an extension of time for assessment of tax due with such return for a three year period beyond that provided for in G.L. c. 62C, § 26. The processing of any such return does not constitute the Commissioner's acceptance or approval of the particular income reporting method adopted by the taxpayer. For purposes of this directive, a "bank" means a bank as defined in G.L. c. 63, § 1, without the inclusion of banks existing by authority of a foreign country, and a "branch" means an office at which the business of banking is conducted, including

all of the following: the receipt of deposits, the payment of checks, and the lending of money.

### Discussion of Law:

General Laws chapter 63, § 1 et seq., provides for the taxation of banks, as defined therein, that are engaged in business in Massachusetts. The rate of tax applicable to banks is determined annually by multiplying the bank's net income, as determined under c. 63, § 1, by the tax rate of 12.54 percent. See G.L. c. 63, § 2. Interstate banking in Massachusetts is a recent phenomenon. See St. 1982, c. 155, § 5; St. 1982 c. 626. §§ 2, 24. Massachusetts law requires that banks that engage in interstate banking in Massachusetts do so through separate subsidiary corporations. See G.L. c. 167, §§ 38, 39; G.L. c. 167A § 2. However, in some circumstances, generally related to the acquisition of an insolvent institution by a bank, federal law may pre-empt state law, and may permit interstate banking in Massachusetts without the use of a separate subsidiary. See, e.g., 12 U.S.C.A. § 1823.

Mitchell Adams  
Commissioner of Revenue  
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